

HOUSE BILL REPORT

HB 1595

As Reported by House Committee On: Local Government

Title: An act relating to land acquired from a commercial waterway district.

Brief Description: Allowing port districts to lease land acquired from a commercial waterway district.

Sponsors: Representatives McDermott, Woods, Cody, Jarrett, Clibborn and Dunn.

Brief History:

Committee Activity:

Local Government: 2/9/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Makes the factual finding that private use of former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers.
- Makes the factual finding that management under port district authority of former commercial waterway district property must be conducted in a manner that maintains the area's economic vitality, protects the environment, and responsibly preserves the public interest in public property.
- Requires that by December 1, 2005, a port district to which the property of a former commercial waterway district was transferred shall report to the chairs of the legislative committees with jurisdiction regarding port property formerly owned by the waterway district.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Simpson, Chair; Clibborn, Vice Chair; B. Sullivan, Takko and Woods.

Minority Report: Do not pass. Signed by 2 members: Representatives Schindler, Ranking Minority Member; and Ahern, Assistant Ranking Minority Member.

Staff: Thamas Osborn (786-7129).

Background:

Port Districts.

Port districts are authorized for the purpose of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, water and air transfer and terminal facilities, or any combination of these facilities. A port district may also, through its commission, spend money and conduct promotions of resources and facilities within the district or general area through advertising, publicizing, or marketing.

A port district is granted broad authority to lease all lands, wharves, docks, and all other property it owns and controls for whatever purposes it deems proper. Subject to specified exceptions, such leases are limited to a maximum of fifty years, but under certain circumstances may be subject to additional thirty year extensions.

Commercial Waterway Districts.

In 1911, legislation was passed authorizing the creation of commercial waterway districts, many of which were created during the ensuing decades. However, the authorizing legislation creating such districts was repealed in 1971, which resulted in the dissolution of the districts.

Summary of Substitute Bill:

The act makes the following factual findings:

- that private use of former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers; and
- that management under port district authority of former commercial waterway district property must be conducted in a manner that maintains the area's economic vitality, protects the environment, and responsibly preserves the public interest in public property.

The substitute bill also requires that by December 1, 2005, a port district to which the property of a former commercial waterway district was transferred shall report to the chairs of the legislative committees with jurisdiction regarding port property formerly owned by the waterway district. The report must include:

- existing uses of the port property by those using former waterway district property;
- a general outline of potential future uses of the public property owned by the port district;
- the status of the environmental mitigation and cleanup of the waterway that is required by federal and state law;

- the status of the port district's communication to, and work with, those using former waterway district property as of January 1, 2005; and
- general terms and conditions of leases the port believes are necessary to give the port adequate control over its property and the general terms and conditions that the port believes will give the current users of the public property continued access to the waterway.

The act expires December 31, 2005.

Substitute Bill Compared to Original Bill:

The substitute bill eliminates all of the substantive provisions of the original bill and states factual findings that include:

- that private use of former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers; and
- that management under port district authority of former commercial waterway district property must be conducted in a manner that maintains the area's economic vitality, protects the environment, and responsibly preserves the public interest in public property.

The substitute bill also requires that by December 1, 2005, a port district to which the property of a former commercial waterway district was transferred shall report to the chairs of the legislative committees with jurisdiction regarding port property formerly owned by the waterway district. The report must include:

- existing uses of the port property by those using former waterway district property;
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- general terms and conditions of leases the port believes are necessary to give the port adequate control over its property and the general terms and conditions that the port believes will give the current users of the public property continued access to the waterway.

The act expires December 31, 2005.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is needed by the Port of Seattle (Port) in order to overcome the unintended consequences of a very old court decision that caused the Port to lose its right to manage and control shoreline properties it owns along the Duwamish Waterway (waterway) in Seattle. Because of the court decision, the shoreline of a width of 125 feet on either side of the waterway (250 feet in total) has been under the de facto control of the contiguous property owners who have businesses and/or residences on the land adjoining the waterway. The court ruling acknowledged that the Port owns the shoreline property, but ruled that contiguous property owners could liberally use the property for the purpose of gaining access to the navigable channel within the waterway. As the result of the ruling, many of the adjoining landowners have encroached on the Port-owned shoreline for business purposes by constructing docks, marinas, buildings, and industrial facilities related to the use of the waterway. Many of these businesses have abused this privilege by using the shoreline as a dumping ground for industrial waste, abandoned vehicles and boats, and dilapidated buildings. Accordingly, the quality of much of the shoreline is being rapidly degraded and the Port is powerless to stop it, since the court ruling prohibits the Port from taking action to remedy these problems or to charge rents or fees in order to receive a fair return for the use of the property. The bill would simply allow the Port to manage and control this shoreline as it does all other Port property in accordance with other existing statutes. This would include the power to negotiate leases, charge rent, conduct cleanup activities, etc. Should the bill pass, the Port would fairly treat the current adjoining property owners regarding rents, leases, and other shoreline management activities. Furthermore, the passage of the bill would enable the Port to begin the process of doing environmental clean-up and to otherwise begin restoring the environmental integrity of the shoreline.

Testimony Against: The bill should not be passed and the court ruling should be allowed to remain effective. The ruling recognized that the purpose of the creation of the waterway was to encourage commerce and that commerce would benefit if the various businesses adjoining the shoreline were allowed to have unencumbered access to the navigable waterway. Unless the businesses are allowed to encroach on the Port-owned shoreline, they could not exist. These businesses were created in reliance on the court ruling and changing the rules now would be a betrayal of such reliance. The adjoining businesses have been using the shoreline since 1911, and since then they have lawfully used the property and used it well. The court recognized that this was the case and this is what lead to the decision in which the court determined that they should be allowed to continue to do so. After almost 100 years, it would be a gross injustice for the Legislature to step in and change a situation that has worked well since it began. Furthermore, allowing the Port to have the power to lease and to demand rents would have the effect of forcing many businesses to close. Many of these businesses have made improvements on the shoreline areas such as docks, marinas, and buildings, in reliance on the old court ruling, and it would be absurd to suddenly let the Port step in and begin demanding rent. The passage of the bill would also represent an economic injustice, insofar as

it would cause property values to decline precipitously. This bill needs much further study since it would have disastrous results for the shoreline area property owners. There is no need to rush this bill through the legislative process without taking a close look at the potential economic consequences.

Persons Testifying: (In support) Linda Strout, Wayne Grotheer, and Tom Tanaka, Port of Seattle; and Fran McWar, Department of Natural Resources.

(Opposed) M.C. Halvorsen; Cliff Webster and Boyer Halvorsen, Boyer Towing; Wil Clark, American Civil Construction; Kate Julin; and Ed Spaunhurst.

Persons Signed In To Testify But Not Testifying: None.